

LOCAL RULES, AS AMENDED
AS OF JULY 1, 1999,
FOR THE
UNITED STATES BANKRUPTCY COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

INCLUDING APPENDIX:

**LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE SOUTHERN AND EASTERN
DISTRICTS OF NEW YORK
REFERRED TO IN THESE RULES**

[Seal]

Effective

July 1, 1999

**The Local Rules for the United States
Bankruptcy Court for the
Eastern District of New York**

Honorable Conrad B. Duberstein, Chief Judge

**Honorable Stan Bernstein
Honorable Carla E. Craig
Honorable Melanie L. Cyganowski
Honorable Dorothy D.T. Eisenberg
Honorable Jerome Feller
Honorable Dennis E. Milton**

Joseph P. Hurley, Clerk

**Holly D.F. Meister, Esq.
Official Reporter**

TABLE OF REVISIONS

The following table points out the changes that have been made to the Local Rules of the United States Bankruptcy Court for the Eastern District of New York since those promulgated on July 1, 1997.

The following Local Rules are new:

- [LBR 1002-1\(d\)](#): “Identification Code”
- [LBR 1007-1\(b\)](#): “Schedules and Lists Filed After Filing of Petition”
- [LBR 1020-1](#): “Small Business Election”
- [LBR 1073-2](#): “Disclosure of Related Cases”
- [LBR 2003-1](#): “Mandatory Disclosure in Chapter 13 Cases”
- [LBR 2090-2](#): “Appearance by Debtor’s Counsel in Adversary Proceedings, Contested Matters, Etc.”
- [LBR 7005-1\(b\)](#): “Filing of Discovery-Related Documents”
- [LBR 9013-1\(f\)](#): “Motion Practice,” “Motions to Avoid Liens”

The following Local Rules have been revised:

- [LBR 1009-1\(b\)](#): “Amendments of Lists, Schedules and Statements”
- [LBR 1073-1\(a\)](#): “Assignment of Cases and Proceedings,” “Chapter 7, 12 and 13 Cases”
- [LBR 1073-1\(c\)](#): “Assignment of Cases and Proceedings,” “Petitions of Affiliates or Related Cases”
- [LBR 2002-1\(a\)](#): “Notice of Presentment,” “Contents of Notice”
- [LBR 2002-2\(b\)](#): “Notice to Governmental Agencies,” “Internal Revenue Service”
- [LBR 2016-1](#): “Compensation of Professionals”
- [LBR 3007-1](#): “Objections to Claims”
- [LBR 3018-1\(c\)](#): “Summary and Certification of Acceptance or Rejection of Plans in Chapter 9 and Chapter 11 Cases,” “Notice of Ineffective Election”
- [LBR 5001-1](#): “Clerk’s Office: Hours; After Hours Filing”
- [LBR 5010-1\(c\)](#): “Reopening Cases,” “Filing Fee”
- [LBR 6004-1\(g\)](#): “Sale of Property, Appraisals and Auctions,” “Proceeds of Auction Sale”
- [LBR 6004-1\(h\)](#): “Sale of Property, Appraisals and Auctions,” “Report of Auction Sale”
- [LBR 6004-1\(k\)](#): “Sale of Property, Appraisals and Auctions,” “No Order Needed to Confirm Sale”
- [LBR 9006-1\(b\)](#): “Time for Service and Filing of Motions and Answering Papers,” “Time for Filing with Clerk”
- [LBR 9006-1\(c\)](#): “Time for Service and Filing of Motions and Answering Papers,” “Extra Time if Service by Mail”
- [LBR 9021-1\(b\)](#): “Entry of Orders, Judgments and Decrees,” “Official Location”
- [LBR 9025-1\(b\)](#): “Sureties,” “Security for Bond”
- [LBR 9028-1](#): “Unavailability of a Judge”

The following Local Rules have been abrogated in their entirety:

- LBR 4004-1: “Automatic Extension of Time to File Complaint Objecting to Discharge in Event of Amendment”
- LBR 4007-1: “Automatic Extension of Time to File Complaint to Determine Dischargeability of a Debt in Event of Amendment”
- LBR 5080-1(b): “Fees - General,” “In Forma Pauperis (Waiver of Fees in Chapter 7 Cases)”

NOTE: Pursuant to Administrative Order 97-13 of the United States District Court for the Eastern District of New York, a \$25.00 fee is payable to the District Court upon admission to practice pro hac vice in accordance with LBR 2090-1(b). Further information is available at the Clerk’s Office.

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**LOCAL BANKRUPTCY RULES
FOR THE
EASTERN DISTRICT OF NEW YORK**

Rule 1001-1 SHORT TITLE; APPLICABILITY

(a) *Short Title.*

These rules shall be known and cited as the "E.D.N.Y. Local Bankruptcy Rules."

(b) *Applicability.*

(i) The E.D.N.Y. Local Bankruptcy Rules, as amended, shall supersede the Former Local Bankruptcy Rules and shall apply to all cases and proceedings in this Court.

(ii) The appropriate citation form for an E.D.N.Y. Local Bankruptcy Rule is "E.D.N.Y. LBR _____." For example, this rule shall be cited as "E.D.N.Y. LBR 1001-1."

(c) In the interest of justice or for cause, a Judge may modify or suspend the requirements set forth in these rules.

CROSS-REFERENCE: Individual chambers rules of Judges, where applicable.

**PART I COMMENCEMENT OF CASE; PROCEEDINGS
RELATING TO PETITION AND ORDER FOR RELIEF**

Rule 1002-1 FILING OF PETITION

(a) *Petition.*

(i) A petition commencing a case under Chapter 7, 12 or 13 of the Bankruptcy Code in which the debtor's address is located in Kings, Richmond or Queens county shall be filed in the office of the Clerk in the Brooklyn courthouse.

(ii) A petition commencing a case under Chapter 7, 12 or 13 of the Bankruptcy Code in which the debtor's address is located in Nassau or Suffolk county shall be filed in the office of the Clerk in either the Westbury or Hauppauge courthouse or, when the operations of those courthouses have been transferred to Central Islip, in the office of the Clerk in the Central Islip courthouse.

- (iii) A petition commencing a case under Chapter 11 of the Bankruptcy Code may be filed in any office of the Clerk.
- (iv) Notwithstanding the foregoing provisions of this E.D.N.Y. LBR 1002-1(a), a petition commencing a case under any Chapter of the Bankruptcy Code may be filed by electronic means if, to the extent, and under the procedures, authorized by the Court.

(b) *Incomplete Filing.*

In the event that a petition is submitted without full compliance with all requirements, the Clerk shall accept the same for filing and, promptly upon the filing, shall provide the debtor, debtor's counsel and the Case Trustee, if any, with a notice of the deficiencies.

In addition, in a chapter 11 case, in the event that any deficiencies in connection with a filing have not been cured within seventy-two (72) hours, the Clerk shall also serve a notice of hearing to consider dismissal of the petition upon the debtor, debtor's attorney and the United States Trustee to be held at the first regular calendar date of the Judge to whom the petition is referred, but no less than fifteen (15) days after the date of such service.

(c) *Effect of Failure to Provide Certain Required Information.*

If the petition fails to specify the chapter under which relief is being sought, the case will be deemed to have been filed under Chapter 7, unless a filing fee consistent with filing under Chapter 9, 11, 12 or 13 has been paid, in which case the petition will be deemed filed under such other chapter. If the petition fails to specify whether it is a consumer or business case, it will be presumed to be a consumer case. If the petition fails to indicate the number of creditors or equity holders, or the amount of assets or debts, it will be presumed that the case falls in the smallest category of each.

(d) *Identification Code*

All petitions filed with the Clerk must set forth in the upper right hand corner of the first page of the petition (i) the identification code of the law firm of the attorney who signed the petition, or (ii) in the event that the attorney who signed the petition is not affiliated with a law firm, the identification code of the individual attorney. The identification code for a law firm is the firm's nine digit tax identification number. The identification code for an individual attorney is the first initial of the first and last names, followed by the last four digits of the attorney's social security number.

All papers and pleadings subsequently filed in the case and/or adversary proceeding must also set forth, in the upper right hand corner, the identification code for the law firm or the individual attorney, as the case may be.

When appearing as trustee, the Case Trustee must add the prefix "t" to his or her identification code.

CROSS-REFERENCE: E.D.N.Y. LBR 9011-1.

Rule 1005-1**DEBTOR'S ADDRESS IN PETITION**

If the debtor's post office address is not the debtor's residence or place of business, the petition shall also state the debtor's residence or place of business, including the street number, street, apartment or suite number and zip code.

Rule 1007-1 LIST OF CREDITORS

(a) *Creditor List.*

In addition to the schedules, a list must be filed which sets forth the names of all creditors in alphabetical order (the "Creditor List"). The Creditor List must also set forth the post office address, zip code, and specific amount of debt owed to each listed creditor. The provider of the Creditor List must certify that it is accurate.

(b) *Schedules and Lists Filed After Filing of Petition.*

All schedules and lists (including the mailing matrix) which were not submitted at the time of filing of the petition but are filed thereafter must be accompanied by: (i) an affidavit setting forth specific additions to and deletions from the mailing matrix or list of creditors that was originally filed with the petition, and (ii) a new mailing matrix that (A) reflects the revised list of creditors, and (B) complies with LBR 1007-2.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1

Rule 1007-2**MAILING MATRIX**

(a) *General Requirements.*

- (i) At the time of filing a voluntary petition or within fifteen (15) days following the entry of an order for relief on an involuntary petition, the debtor shall file a mailing matrix which shall include, in alphabetical order, the name and last known mailing address (including zip codes) for every scheduled creditor. The mailing matrix shall also include those agencies and officers of the United States entitled to receive notice under Bankruptcy Rule 2002(j).
- (ii) If the debtor is a partnership, the matrix shall contain the names and current mailing addresses of each general and limited partner.
- (iii) If the debtor is a corporation, the matrix shall contain: (1) the names and current mailing addresses of the present officers and directors and the position held by each, or if none, the immediate past officers and past directors; and (2) the name and address of any person who may be served pursuant to Bankruptcy Rule 7004(b)(3). In addition, the debtor shall file with its list of equity security holders a separate

mailing matrix containing the name and last known address or place of business of each equity security holder.

(b) *Creditor Mailing Matrix Specification.*

- (i) All creditor mailing matrices must be produced on a typewriter or computer printer, using a standard typeface, on plain white, 8 ½" x 11" bond paper. Creditors' names and addresses must be listed in a single column down the center of the page, allowing top and bottom margins of at least one inch. Each creditor listing must consist of no more than five (5) lines, with each line consisting of no more than 25 characters. Listings must be separated by at least one (1) blank line. There must not be any extra or stray marks on the matrix. It must not contain any page numbers, case number or listings for the debtor or debtor's attorney.
- (ii) In cases involving 50 to 100 creditors, it is optional for the debtor or debtor's counsel to also submit the mailing matrix on a floppy computer diskette. In cases with more than 100 creditors, it is required that the debtor or debtor's counsel also submit the mailing matrix on an appropriately configured computer diskette. The file on the diskette must be saved under the name CREDITOR.TXT and must be the only file included on the diskette. The diskette must be write-protected and labeled with the case name, allowing room on the label for entry of the case number. The diskette must be submitted at the time of filing of the petition.

(c) *Accuracy of Information Provided and Amendment of Creditor Master Mailing Matrix.*

The debtor and debtor's attorney are responsible for the preparation of the creditor mailing matrices and any amendments thereto. Upon any amendment to a creditor mailing matrix, the debtor shall file an amended creditor mailing matrix together with a list of all creditors who were added or deleted. The debtor shall sign and verify the matrix on the last page attesting to the accuracy and completeness of the information to the best of debtor's ability.

Rule 1007-3 DEBTOR'S AFFIDAVIT TO BE FILED IN CHAPTER 11 CASES

(a) *Contents of Affidavit.*

A debtor in a chapter 11 case shall file an affidavit setting forth:

- (i) the nature of the debtor's business and a concise statement of the circumstances leading to the debtor's filing under chapter 11;
- (ii) if the case originally was commenced under chapter 7, 12 or 13, the name and address of any Case Trustee appointed in the case and, in a case originally commenced under chapter 7, the names and addresses of the members of any creditors' committee;

- (iii) the names and addresses of the members of, and professionals employed by, any committee organized prior to the order for relief in the chapter 11 case, and a brief description of the circumstances surrounding the formation of the committee and the date of its formation;
- (iv) with respect to each of the holders of the twenty (20) largest unsecured claims, excluding insiders: name, address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), telephone number, name(s) of person(s) familiar with the debtor's account, amount of the claim, and an indication of whether the claim is contingent, unliquidated, disputed, or partially secured;
- (v) with respect to each of the holders of the five (5) largest secured claims: name, address (including the number, street, apartment or suite number, and zip code, if not included in the post office address), amount of the claim, a brief description and an estimate of the value of the collateral securing the claim, and whether the claim or lien is disputed;
- (vi) a summary of the debtor's assets and liabilities;
- (vii) the number and classes of shares of stock, debentures, or other securities of the debtor that are publicly held, and the number of holders thereof, listing separately those held by each of the debtor's officers and directors and the amounts so held;
- (viii) a list of all of the debtor's property in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor, or agent for any such entity, giving the name, address, and telephone number of each such entity, the title of any proceeding relating thereto, and the court in which it is pending;
- (ix) a list of the premises owned, leased, or held under other arrangement from which the debtor operates its business;
- (x) the location of the debtor's substantial assets, the location of its books and records, and the nature, location, and value of any assets held by the debtor outside the territorial limits of the United States;
- (xi) the nature and present status of each action or proceeding, pending or threatened, against the debtor or its property where a judgment against the debtor or a seizure of its property may be imminent;
- (xii) the names of the individuals who comprise the debtor's existing senior management, their tenure with the debtor, and a brief summary of their relevant responsibilities and experience;

- (xiii) the estimated amount of the weekly payroll to employees (exclusive of officers, directors, stockholders, and partners) for the thirty (30) day period following the filing of the chapter 11 petition;
- (xiv) the amount paid and proposed to be paid for services for the thirty (30) day period following the filing of the chapter 11 petition --
 - (A) if the debtor is a corporation, to officers and directors;
 - (B) if the debtor is an individual or a partnership, to the individual or the members of the partnership; and
 - (C) if a financial or business consultant has been retained by the debtor, to the consultant;
- (xv) a schedule, for the thirty (30) day period following the filing of the chapter 11 petition, of estimated cash receipts and disbursements, net cash gain or loss, obligations and receivables expected to accrue but remaining unpaid, other than professional fees, and any other information relevant to an understanding of the foregoing; and
- (xvi) such additional information as may be necessary to fully inform the Court of the debtor's rehabilitation prospects.

(b) *When to File.*

In a chapter 11 case, upon the entry of an order for relief, the affidavit shall be filed forthwith, but in no event later than fifteen (15) days after the date on which the order for relief is entered.

(c) *Waiver of Requirements.*

Upon motion of the debtor on notice to the United States Trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the Judge may dispense with any of the foregoing provisions, with the exception of those contained in paragraphs (i) through (vi), inclusive, of E.D.N.Y. LBR 1007-3(a).

RULE 1009-1 AMENDMENTS OF LISTS, SCHEDULES AND STATEMENTS

(a) *Effectuation of Amendment.*

No order is required for the filing of amended lists, schedules or statements by the debtor or Case Trustee. Amendments shall be accompanied by an affidavit setting forth the specific additions to and deletions from the lists or schedules. No such amendment shall be effective until

proof of service in accordance with subsection 1009-1(b) has been filed with the Clerk. If a creditor is added or deleted, an amended creditor mailing matrix must also be filed.

(b) *Notice of Amendment.*

A complete copy of the document, as amended, together with the copy of LBR 1009-1(a) affidavit, shall be served by the amending party upon: (i) the United States Trustee; (ii) the Case Trustee; (iii) all creditors who were added or deleted; and (iv) any other party affected thereby. In the event the amendment affects claimed exemptions, the amending party must also serve all creditors. If the amendment adds a creditor, service on such creditor shall include copies of all notices previously sent to creditors that appear in the Court's case file.

(c) *Number of Copies.*

Whenever amendments are made to a debtor's lists, schedules or statements, the party making the amendment must file with the Clerk: (i) if a chapter 7, 12 or 13 case, an original and three (3) copies of the document as amended; or (ii) if a chapter 11 case, an original and six (6) copies of the document as amended.

CROSS-REFERENCE: E.D.N.Y. LBR 4003-1, 4004-1, 4007-1, 9004-1.

Rule 1013-1 INVOLUNTARY PETITIONS

(a) *Entry of Order for Relief upon Default of Alleged Debtor.*

If proof of the service of the summons and involuntary petition has been filed and if the alleged debtor has not timely responded, an order for relief shall be entered.

(b) *Notice of Entry.*

Upon entry of an order for relief in an involuntary case, the Clerk shall forthwith serve a copy of the order with notice of entry upon the petitioners, the debtor and its attorney of record, if any, and the United States Trustee.

(c) If proof of the service of the summons and involuntary petition pursuant to Bankruptcy Rule 7004 is not timely filed, the Judge may dismiss the case.

Rule 1014-1 TRANSFER OF CASES OR PROCEEDINGS

Whenever a case or adversary proceeding is ordered transferred from this district, the Clerk, promptly after the expiration of ten (10) days from the date of entry of the order, shall mail to the Court to which the case or adversary proceeding is transferred: (i) certified copies of the opinion

granting the transfer, if any, the transfer order, and the docket entries in the case or adversary proceeding; and (ii) the originals of all other papers on file in the case or adversary proceeding.

Rule 1017-1 DISMISSAL OF CASE AFTER CONVERSION

Where a case has been converted from chapter 11 to chapter 7 and the Case Trustee is seeking to dismiss the case for failure of the debtor to attend the meeting of creditors pursuant to § 341 of the Bankruptcy Code, the Case Trustee must file an affidavit setting forth what efforts, if any, have been made to locate and serve the debtor.

Rule 1020-1 SMALL BUSINESS ELECTION

If a debtor files a written statement of election to be considered a small business, a copy of the statement shall be mailed by the debtor to all creditors and equity security holders and to the United States Trustee.

Rule 1073-1 ASSIGNMENT OF CASES AND PROCEEDINGS

(a) *Chapter 7, 12 and 13 Cases.*

- (i) Cases commenced under chapter 7, 12 or 13 in which the debtor's address is located in the counties of Kings, Richmond or Queens county shall be assigned equally and randomly to the Judges sitting in Brooklyn. Cases commenced under such chapters in which the debtor's address is located in Nassau county or certain portions of Suffolk county shall, while the Westbury courthouse remains in operation, be assigned equally and randomly to the Judges sitting in Westbury. Cases commenced under such chapters in which the debtor's address is located in other portions of Suffolk county shall, while the Hauppauge courthouse remains in operation, be assigned to the Judge sitting in Hauppauge. When all of the Court's Long Island operations are transferred to the Central Islip courthouse, all cases commenced under such chapters in which the debtor's address is located in Nassau or Suffolk county shall be assigned equally and randomly to the Judges sitting in Central Islip.
- (ii) The Clerk, with the approval of the Chief Judge, may adjust assignments as often as is necessary to accommodate fluctuations in the number of filings in which the debtor's address is located in various counties or portions thereof.

(b) *Chapter 9 and 11 Cases.*

Cases commenced under chapter 9 or 11 shall be assigned by random and equal drum selection to the Judges. Nevertheless, the Clerk may, with the approval of the Chief Judge, in the interest of justice or for the convenience of the parties, assign chapter 9 or 11 cases having a debtor's address in either of the counties of Richmond or Suffolk to a Judge sitting in Brooklyn or Hauppauge, respectively.

(c) *Petitions of Affiliates or Related Cases.*

Notwithstanding subdivisions (a) and (b) of this rule, cases involving affiliated or related debtors shall be assigned to the Judge to whom the first such case was assigned. In addition, except as required by LBR 1073-1(a)(i), any chapter 7, 12 or 13 case subsequently filed by a debtor who has previously filed a petition shall be assigned to the Judge to whom the last such case was assigned.

(d) *Reassignment of Cases.*

The Judge to whom a case was originally assigned may refer the case to the Clerk for reassignment.

(e) In cases or proceedings not otherwise covered by these rules, the Clerk will make a random assignment.

(f) *Assignments and Reassignments.*

Notwithstanding the provisions of this rule, the Chief Judge may, in the interests of justice or the proper administration of the Court, assign or re-assign matters or cases. In addition, the Chief Judge shall supervise and rule upon all matters and disputes relating to assignments and reassignments of cases.

LBR 1073-2 DISCLOSURE OF RELATED CASES

(a) *Definition of Related Cases.*

Cases shall be deemed "Related Cases" for purposes of E.D.N.Y. LBR 1073-1 and E.D.N.Y. LBR 1073-2 if the earlier case was pending at any time within six years before the filing of the new petition, and the debtors in such cases:

- (i) are the same;
- (ii) are spouses or ex-spouses;
- (iii) are affiliates, as defined in 11 U.S.C. § 101(2);
- (iv) are general partners in the same partnership;
- (v) are a partnership and one or more of its general partners;
- (vi) are partnerships which share one or more common general partners;
- or
- (vii) have, or within 180 days of the commencement of either of the Related Cases had, an interest in property that was or is included in the property of another estate under 11 U.S.C. § 541(a).

(b) *Disclosure of Related Cases.*

- (i) A petition commencing a case shall be accompanied by a “E.D.N.Y. LBR 1073-2 Statement” in the form prescribed by the Clerk.
- (ii) The E.D.N.Y. LBR 1073-2 Statement shall be executed by the debtor or any other petitioner under penalty of perjury and shall disclose, to the petitioner’s best knowledge, information and belief:
 - (A) whether any Related Case(s) is pending or has been pending at any time;
 - (B) the name of the debtor in such Related Case(s);
 - (C) the case number of such Related Case(s);
 - (D) the district and division in which such Related Case(s) is or was pending;
 - (E) the Judge(s) to whom such Related Case(s) was assigned;
 - (F) the current status of such Related Case(s);
 - (G) the manner in which the cases are related; and
 - (H) any real property listed in a debtor’s Schedule A (“Real Property”) which was also listed in a Schedule A filed in a prior case.

(c) The failure fully and truthfully to provide all information required by the E.D.N.Y. LBR 1073-2 Statement may subject the debtor or any other petitioner and their attorney to appropriate sanctions, including without limitation conversion, the appointment of a trustee or the dismissal of the case with prejudice.

(d) Any petition that is not accompanied by a E.D.N.Y. LBR 1073-2 Statement shall be deemed deficient.

CROSS-REFERENCE: E.D.N.Y. LBR 1073-1.

Rule 1074-1 CORPORATE RESOLUTION; PARTNERSHIP STATEMENT

(a) *Corporate Resolution.*

A voluntary petition or consent to an involuntary petition filed by a corporation shall be accompanied by a duly attested copy of the corporate resolution authorizing, or other appropriate authorization for, the filing.

(b) *Partnership Statements.*

A voluntary petition filed by, or consent to an involuntary petition filed on behalf of, a partnership shall be accompanied by a duly attested statement that all partners whose consent is required for the filing have consented.

PART II OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2002-1 NOTICE OF PRESENTMENT

(a) *Contents of Notice.*

Whenever “notice and a hearing” are specified in the Bankruptcy Code or Bankruptcy Rules but a motion or application is not mandatory, the entity proposing to act or obtain an order, in lieu of proceeding by motion or application, may proceed by giving written notice, which shall be filed with the Clerk, together with proof of service, setting forth:

- (i) a statement of the action proposed to be taken or the order to be presented, including a concise statement of the terms and conditions of, and the reasons for, the proposed action or order;
- (ii) the grounds in support thereof, including a concise statement of the legal authority;
- (iii) the date by which objections or responses to the proposed action or order shall be served and filed;
- (iv) the date and time when the action will be taken or the proposed order will be presented for signature if there is no objection, and a statement that the action will be taken or the order may be entered without a hearing unless a timely objection is made; and
- (v) the date on which a hearing will be held if a timely objection is made.

(b) *Time for Notice.*

Any notice pursuant to subdivision (a) of this rule shall be given at least twenty (20) days prior to the date on which the proposed action is to be taken or proposed order is to be presented.

(c) *Entities to Receive Notice.*

In addition to the requirements of Bankruptcy Rule 2002 and Local Bankruptcy Rule 2002-2, notice under subdivision (a) of this rule shall be given to any entity having or claiming an interest in the subject matter of the proposed action or order or who otherwise would be affected by the proposed action or order.

(d) *Objection.*

Any objection to the proposed action or order shall be in writing, state with particularity the reasons for the objection, and be served on the proponent and filed with the Clerk so as to be received at least three (3) days prior to the date set for the proposed action or the presentment of the proposed order. The objection shall be filed with the Clerk together with proof of service and a copy designated for chambers .

CROSS-REFERENCE: E.D.N.Y. LBR 2002-2, 4001-1, 5070-1

Rule 2002-2 NOTICE TO GOVERNMENTAL AGENCIES

(a) *United States Trustee.*

Unless the case is a chapter 9 case or the United States Trustee requests otherwise, any notice required to be given to creditors also shall be given to the United States Trustee at the following address:

Office of the United States Trustee
825 East Gate Boulevard
Suite 304
Garden City, New York 11530

(b) *Internal Revenue Service.*

Except as otherwise requested by it, any notices required to be given to the IRS shall be sent to each of the following:

Internal Revenue Service
Special Procedures Function
P.O. Box 60
Brooklyn, New York 11201

United States Attorney
Att: Chief of Bankruptcy Litigation
One Pierrepont Plaza -- 14th Floor
Brooklyn, New York 11201

U.S. Department of Justice, Tax Division
Box 55
Ben Franklin Station
Washington, D.C. 20044

- (c) *New York State Department of Taxation and Finance.*

Except as otherwise requested by it, any notices required to be given to the New York State Department of Taxation and Finance shall be sent to each of the following:

New York State Department of Taxation and Finance
Queens District Office
80-02 Kew Gardens Road
Kew Gardens, New York 11415

State of New York
Office of the Attorney General
120 Broadway
New York, New York 10271

LBR 2003-1 MANDATORY DISCLOSURE IN CHAPTER 13 CASES

(a) No later than ten (10) days before the first date set for the meeting of creditors pursuant to 11 U.S.C. § 341(a), each debtor shall provide the following documents to the Case Trustee:

- (i) copies of signed, filed state and federal income tax returns for the two most recent tax years for debtor(s);
- (ii) copies of four (4) most recent pay stubs for debtor(s);
- (iii) copies of affidavit(s) of contribution and copies of four (4) most recent pay stubs for each person contributing to the proposed plan or to payment of expenses of the debtor(s)' household;
- (iv) documentation (other than tax assessments) of the current value of all real property, condominiums, cooperative apartments, vacant land, cemetery plots and/or timeshares in which debtor(s) ha(s/ve) an ownership interest (*except that this information is not required in those Chapter 13 cases where the debtor(s) propose(s) to pay 100% to unsecured creditors*);
- (v) copies of lease(s) for all property rented out by debtor(s);
- (vi) copy of the affidavit of changed circumstances, setting forth the details of all debtor(s)' prior filings, identifying specifically the reason(s) for the failure of prior case(s), and detailing debtor(s)' current economic circumstances (*only applicable to a debtor(s) who previously filed a Chapter 13 petition*); and

- (vii) copies of canceled checks, receipts or money orders documenting payment of all mortgage installments and lease payments that have come due since the petition was filed.
- (b) The original affidavits(s) of contribution and changed circumstances, required by LBR 2003-1(a)(iii) and (vi) above, must be filed with the Clerk.
- (c) Debtor(s) shall also provide promptly to the Case Trustee any other documents within the scope of Fed. R. Bankr. P. 2004(b) that the Case Trustee may request from time to time in the course of the case.

Rule 2014-1 EMPLOYMENT OF PROFESSIONAL PERSONS

- (a) An application for the employment of a professional person pursuant to §§ 327 or 1103 of the Bankruptcy Code shall state the terms and conditions of the employment, including the terms of any retainer, hourly fee, or contingent fee arrangement. The application shall also set forth all compensation theretofore paid or promised to the professional person and the specific source of such compensation. The application must also include a certification from the professional that he, she or it does not hold or represent an interest adverse to the estate except as specifically disclosed therein.
- (b) An application seeking authorization to employ an accountant shall include an affidavit by an authorized representative of the accounting firm that sets forth: (i) the accountant's name, business address, whether or not the accountant is a certified public accountant, and to the best of the accountant's knowledge, the relationship to or business association with any attorney, creditor, debtor or any other party in the case; (ii) whether the accountant has previously rendered any professional services to the Case Trustee, debtor or debtor in possession, the extent thereof and the status of the compensation therefor; and (iii) the nature and extent of the proposed services, the estimated cost thereof, the basis of such estimate and the extent to which the accountant is familiar with the books or accounts of the debtor.
- (c) All *ex parte* proposed orders and supporting documentation for employment of any professional must be submitted to the United States Trustee for review prior to filing with the Clerk. Two copies and a stamped, self-addressed envelope shall be included with any submission to the United States Trustee.

CROSS-REFERENCE: E.D.N.Y. LBR 6004-1(d), 6005-1

Rule 2015-1 MONTHLY REPORTS IN ALL CHAPTER 11, 12 AND BUSINESS CHAPTER 13 CASES

The debtor in possession or Case Trustee in all chapter 11 and 12 cases, or a chapter 13 debtor engaged in business within the meaning of § 1304(a) of the Bankruptcy Code, shall file with the Clerk an original plus one copy, and serve upon the United States Trustee and counsel for the creditors' committee (if any) in a chapter 11 or 12 case, or the Case Trustee in a chapter 13 case, one

copy of verified monthly reports no later than the 20th day of each month, which shall be completed in the manner prescribed by the United States Trustee. Failure to file required reports may constitute cause for dismissal or conversion of the case.

Rule 2016-1 COMPENSATION OF PROFESSIONALS

A person seeking an award of compensation or reimbursement of expenses should comply with the requirements contained in any fee guidelines promulgated by the Office of the United States Trustee. A copy of the Order of Retention of the professional must accompany all such applications.

**Rule 2016-2 FINAL COMPENSATION OR REIMBURSEMENT OF EXPENSES
IN CHAPTER 7 CASES**

A person seeking a final award of compensation or reimbursement of expenses in a chapter 7 case shall file an application with the Clerk and serve a copy on the Case Trustee and the United States Trustee not later than twenty (20) days prior to the date of the hearing on the Case Trustee's final account. Failure to file and serve an application within the time prescribed by this rule may result in its disallowance. The United States Trustee shall file any objection to such application at least five (5) business days prior to the date of the hearing.

**Rule 2017-1 DESCRIPTION OF PRE-PETITION SERVICES OF
DEBTOR'S COUNSEL IN CHAPTER 7 OR 13 CASES**

Upon the filing of a chapter 7 or chapter 13 case, the attorney for the debtor shall submit a statement, together with and in addition to the statement required by Bankruptcy Rule 2016(b), containing: (i) a description of pre-petition services performed for and on behalf of the debtor in contemplation of the petition; (ii) an itemization of the services performed by each member, associate, or paraprofessional of the firm; (iii) the time spent in the performance thereof, including the dates upon which the services were rendered and the time spent on each date; (iv) an itemization of expenses incurred by the debtor's attorney; and (v) the firm's billing rates for comparable services for each member, associate or paraprofessional.

**Rule 2090-1 PRACTICE BEFORE THE COURT; WITHDRAWAL AS
ATTORNEY OF RECORD**

(a) *General.*

An attorney who may practice in the District Court pursuant to Local Civil Rule 1.3 of the District Rules may practice in this Court.

(b) *Pro Hac Vice.*

Upon motion to the Judge, a member in good standing of the bar of any state or of any United States District Court may be permitted to practice in this Court in a particular case, adversary proceeding, or contested matter.

(c) *Pro Se Designation of Address.*

An individual may appear *pro se*. Such an individual shall include his or her residence or place of business address and telephone number in the initial notice or pleading.

(d) *Withdrawal or Substitution of Attorneys of Record.*

An attorney who has been authorized to be retained or has appeared as the attorney of record for the debtor, Case Trustee, examiner or committee may not withdraw or be relieved or displaced except by order after notice to the party represented, any adversaries and the United States Trustee. An application for such an order shall include a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including the status of any pending matters.

(e) *Exceptions.*

Except for subdivision (c), this rule shall not apply to: (i) the filing of a proof of claim or interest; or (ii) an appearance by a child support creditor or the creditor's representative.

LBR 2090-2 APPEARANCE BY DEBTOR'S COUNSEL IN ADVERSARY PROCEEDINGS, CONTESTED MATTERS, ETC.

(a) *In General.*

The attorney of record for a debtor shall appear on behalf of the debtor to defend an adversary proceeding, contested matter, motion or application (each a "Litigated Matter" for purposes of this Rule) filed against the debtor during the pendency of the bankruptcy case.

(b) *Exclusion of Adversary Proceeding Defense from Scope of Representation:*

If the debtor's prepetition written retainer agreement with his or her attorney of record excludes the defense of an adversary proceeding from the agreed scope of representation, and if the attorney will not for that reason appear on the debtor's behalf in the adversary proceeding, the attorney shall, within fifteen (15) days of service of the summons and complaint, file with the Clerk and serve on the debtor and counsel for the plaintiff an affirmation setting forth the following:

- (i) that such attorney has not been retained to represent the debtor in the adversary proceeding and for that reason will not undertake the representation;

- (ii) the applicable provisions of the attorney's written retainer agreement with the debtor;
 - (iii) that such attorney, following the commencement of the adversary proceeding, has advised the debtor of (1) the nature of the adversary proceeding and the claims asserted therein, (2) the debtor's obligation to file and serve an appropriate response to the initial pleading and the consequences of failing timely to answer or move with respect to the pleading, (3) the requirements of form and time limits applicable to the preparation, filing and service of a responsive pleading, (4) how to serve and file a responsive pleading, and (5) why the attorney has not undertaken the representation; and
 - (iv) if the attorney is, despite best efforts, unable to contact the debtor to communicate the information described in subparagraph (b)(iii) above, the affirmation shall also set forth in detail the nature of the attorney's efforts to contact the debtor.
- (c) *Relief from Representation of the Debtor Under Other Circumstances.*

Applications for relief from representation of a debtor in defense of a Litigated Matter under circumstances other than those described in subparagraph (b) above shall be made pursuant to E.D.N.Y. LBR 2090-1. The mere filing of a withdrawal application pursuant to E.D.N.Y. LBR 2090-1 does not suspend the requirements of E.D.N.Y. LBR 2090-2(a) nor toll the running of the time limitations applicable to the interposition of responses to papers initiating Litigated Matters.

CROSS-REFERENCE: E.D.N.Y. LBR 2090-1.

PART III CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3007-1 OBJECTIONS TO CLAIMS

- (a) Every motion to reduce, expunge, or reclassify claims shall have attached thereto a copy of the filed claim (without exhibits) which identifies the claimant and the claim's number. To the extent that the motion refers to claims scheduled but not filed, the motion shall so state. Every reference to a filed claim in both the moving papers and in any order to be entered thereon shall refer to the claim both by name and number.
- (b) No motion to reduce, expunge, or reclassify claims shall be directed to more than ten (10) claims, and no more than five (5) motions shall be heard on any calendar date.
- (c) Multiple motions to reduce, expunge, or reclassify claims shall be sequentially numbered and shall be organized such that each of the claims grouped in any motion shall be objected to on the same general grounds.

(d) When a motion to reduce, expunge, or reclassify multiple claims has been adjourned, the moving party shall file with the Clerk, at least three (3) business days prior to the date to which the hearing was adjourned, a statement setting forth:

- (i) the name of the case;
- (ii) the docket number of the case;
- (iii) the last date the motion appeared on the calendar;
- (iv) the identity and disposition of those claims previously disposed of;
- (v) a list of those claims, identified by both number and name of claimant, whose objections still remain to be determined; and
- (vi) that each of the claimants whose claim still remains to be determined has been given notice of the adjourned hearing.

CROSS-REFERENCE: E.D.N.Y. LBR 5075-1

Rule 3015-1 CHAPTER 13 -- PLAN

(a) *Service of Plan.*

If a chapter 13 petition is filed without a plan, or if a case is converted to chapter 13, the debtor must: (i) file the plan within fifteen (15) days, unless an extension is requested and granted by the Court, and (ii) serve the plan on the Case Trustee and all creditors within ten (10) days of filing of the plan, and file proof of service thereof.

(b) *Notice and Hearing for Attorney's Fees to be Treated as Administrative Expense.*

If the compensation, or any portion thereof, of the attorney for a chapter 13 debtor is to be treated as an administrative expense under the plan, the attorney shall provide adequate notice of that fact to the debtor, the Case Trustee, the United States Trustee, and all creditors. The notice shall be deemed adequate if the plan, or a summary of the plan, which states with particularity the date(s) and amount of any payments to be made to the attorney, is served upon all parties in interest at least fifteen (15) days prior to the confirmation hearing.

Rule 3015-2 CHAPTER 13 -- MODIFICATIONS OF PLAN

(a) *Modification of Chapter 13 Plan Before Confirmation.*

If the modification of the chapter 13 plan adversely affects the treatment of the claim of any creditor, the debtor shall serve a copy of the modified plan on the Case Trustee and on all creditors not later than ten (10) days prior to the date fixed for the hearing on confirmation or any adjournment thereof.

(b) *Modification of Chapter 13 Plan After Confirmation.*

After confirmation, a plan may be modified by motion or through the procedure described in Local Bankruptcy Rule 2002-1, provided there is compliance with Bankruptcy Rule 3015(g). There shall be attached to the motion or notice a copy of the proposed modified plan.

Rule 3015-3 HEARING ON CONFIRMATION OF CHAPTER 13 PLAN

Unless excused, the debtor and debtor's attorney shall attend the hearing on confirmation of the chapter 13 plan.

**Rule 3017-1 PROPOSED DISCLOSURE STATEMENTS IN CHAPTER 9 AND
CHAPTER 11 CASES: TRANSMITTAL AND DISCLAIMER**

(a) *Transmittal.*

The proponent of a plan shall transmit all notices and documents required to be transmitted by Bankruptcy Rule 3017(a). Upon request, the Clerk shall supply the proponent, at a reasonable cost, with any available matrix of creditors for the purpose of preparing address labels.

(b) *Disclaimer.*

Before a proposed disclosure statement has been approved, it shall have on its cover, in boldface type, the following language, or words of similar import:

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR
REJECTION OF THE PLAN. ACCEPTANCES OR
REJECTIONS MAY NOT BE SOLICITED UNTIL A
DISCLOSURE STATEMENT HAS BEEN APPROVED BY
THE BANKRUPTCY COURT. THIS DISCLOSURE
STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT
HAS NOT BEEN APPROVED BY THE COURT.**

(c) *Disclaimer in Small Business Cases.*

In a case where the debtor has elected to be considered a small business as defined in § 101(51C) of the Bankruptcy Code, after conditional approval but before final approval of a proposed disclosure statement has been given, such statement shall have on its cover, in boldface type, the following language, or words of similar import:

THE DEBTOR IN THIS CASE HAS ELECTED TO BE CONSIDERED A SMALL BUSINESS. AS A RESULT, THE DEBTOR MAY DISTRIBUTE THIS DISCLOSURE STATEMENT BEFORE ITS FINAL APPROVAL BY THE COURT. IF AN OBJECTION TO THIS DISCLOSURE STATEMENT IS FILED BY A PARTY IN INTEREST, FINAL APPROVAL OF THIS DISCLOSURE STATEMENT WILL BE CONSIDERED AT OR BEFORE THE HEARING ON CONFIRMATION OF THE PLAN.

Rule 3018-1 SUMMARY AND CERTIFICATION OF ACCEPTANCE OR REJECTION OF PLANS IN CHAPTER 9 AND CHAPTER 11 CASES

(a) *Summary of Ballots and Notice of Cramdown*

At least five (5) business days prior to the hearing on confirmation of a chapter 9 or chapter 11 plan, the proponent of the plan shall file with the Clerk, and serve upon the United States Trustee and counsel to the creditors' committee, if any, a one-page statement setting forth the following information:

- (i) a summary of the ballots received;
- (ii) whether the proponent proposes to confirm the plan by cramdown; and
- (iii) whether any witnesses other than the proponent's witness in favor of the plan will testify as to any facts relevant to confirmation (testimony by the proponent on behalf of the plan is required).

(b) *Certification of Vote.*

Prior to or at the hearing on confirmation of a chapter 9 or chapter 11 plan, the proponent of a plan or the party authorized to receive the acceptances and rejections of the plan shall certify to the Judge in writing the amount and number of allowed claims or allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served upon the debtor, the Case Trustee, each committee, and the United States Trustee. The Judge may find that the plan has been accepted or rejected on the basis of the certification.

(c) *Notice of Ineffective Election.*

If a plan in a chapter 9 or chapter 11 case permits the holder of a claim or interest to make an election with respect to the treatment of the claim or interest, and for any reason the holder's election is deemed ineffective or otherwise is not counted by the person authorized to tabulate ballots, that person shall give notice of that fact to the holder at least five (5) days prior to the hearing on confirmation.

Rule 3020-1 TIME FOR OBJECTING TO CONFIRMATION IN CHAPTER 9 AND CHAPTER 11 CASES; WITHDRAWAL OF OBJECTIONS

(a) *Objections to Confirmation.*

Objections to confirmation of a plan shall be filed not later than five (5) days prior to the hearing to consider confirmation of the plan.

(b) *Withdrawal of Objections.*

If an objection to confirmation of a plan is withdrawn, the plan shall not be confirmed unless the proponent has disclosed the reasons for the withdrawal, including the terms of any agreement precipitating the withdrawal of the objection.

Rule 3021-1 CONFIRMATION REQUIREMENTS IN CHAPTER 9 AND 11 CASES

(a) *Confirmation Order.*

A proposed order confirming a Chapter 9 or 11 plan shall have annexed a copy of the plan to be confirmed.

(b) *Payment of Special Charges.*

Upon confirmation, the proponent shall pay to the Clerk any special charges that may be assessed by the Court and shall pay to the United States Trustee any special charges assessed by it.

(c) *Final Decree.*

Within ninety (90) days after confirmation, the proponent shall file, on notice to the United States Trustee, an application and a proposed order for a final decree pursuant to Bankruptcy Rule 3022. Upon request, the Judge may reduce or extend the time to file such application.

PART IV THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 RELIEF FROM AUTOMATIC STAY

(a) *By Motion.*

A motion for relief from the automatic stay under § 362 of the Bankruptcy Code shall be made returnable within thirty (30) days of the date filed.

(b) *By Presentment.*

A motion for relief from the automatic stay under § 362 of the Bankruptcy Code may be made in the manner set forth in Local Bankruptcy Rule 2002-1. If a proper objection is filed and a hearing is scheduled, the time limitation set forth in § 362(e) of the Bankruptcy Code is deemed waived.

CROSS-REFERENCE: E.D.N.Y. LBR 2002-1, 5070-1

Rule 4001-3 OBTAINING CREDIT

A motion pursuant to § 364(c) or (d) of the Bankruptcy Code shall state whether priority over any administrative expense specified in § 503(b) or § 507(a) of the Bankruptcy Code is sought.

Rule 4003-1 AMENDMENT TO CLAIM OF EXEMPTIONS

An amendment to a claim of exemptions pursuant to Bankruptcy Rules 1009 and 4003 must be filed and served on the Case Trustee, the United States Trustee, and all creditors. No such amendment shall be effective until proof of service is filed, which must be done within ten (10) days of service.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1

Rule 4004-2 SETTLEMENT OR DISMISSAL OF PROCEEDINGS OBJECTING TO DISCHARGE

A complaint objecting to discharge shall not be settled or dismissed unless an affidavit of the debtor or representative of the objecting party shall have been made and filed setting forth what consideration, if any, has been paid or promised to the objecting party. Said affidavit must be served upon the Case Trustee and all creditors and parties in interest.

Rule 4007-2 SETTLEMENT OR DISMISSAL OF PROCEEDINGS OBJECTING TO DISCHARGEABILITY

In all instances not governed by § 524(d) of the Bankruptcy Code, no adversary proceeding objecting to dischargeability of a debt shall be settled or dismissed except pursuant to an order after inquiry into the circumstances of any settlement, including the terms of any agreement entered into between the debtor and creditor relating to the payment of the debt, in whole or in part.

PART V COURTS AND CLERKS

Rule 5001-1 CLERK'S OFFICE: HOURS; AFTER HOURS FILING

The offices of the Clerk shall be open on Monday through Friday from 9:00 a.m. to 4:30 p.m., except on legal or court holidays, and shall be closed on Saturdays and Sundays. When the Clerk's office is closed, papers may be submitted to the Bankruptcy Court in a night depository located in the courthouse lobby of the United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201. When the Court's Long Island operations are transferred to the Central Islip courthouse, and the Clerk's office is closed, papers required to be filed at that courthouse may be submitted in a night depository located in the lobby at that location. If the papers are deposited in a night depository, they will be deemed to have been filed as of the exact time and date stamped on the papers, except that a petition initiating a case will not be deemed to be filed until received and stamped by the Clerk.

Between the hours of 9:00 a.m. and 4:00 p.m., persons may review records, request files to be pulled for public review, review docket(s), request docket(s) to be pulled for public review or make a public inquiry at the Clerk's office. Telephone inquiries to the Clerk's office may be made between the hours of 10:00 a.m. to 12:00 noon, and 2:00 p.m. to 4:00 p.m.

Rule 5005-1 FILING AND TRANSMITTAL OF PAPERS

All papers (other than the petition commencing the case) in any case, proceeding or contested matter shall be filed in the office of the Clerk located where the Judge who is assigned to the matter regularly sits.

CROSS-REFERENCE: E.D.N.Y. LBR 1002-1

Rule 5010-1 REOPENING CASES

(a) *Contents of Motion.*

A motion to reopen a case pursuant to § 350(b) of the Bankruptcy Code and Bankruptcy Rule 5010 shall be in writing and state the name of the Judge to whom the case had been assigned and the date on which the case was closed.

(b) *Assignment of Matter.*

A motion to reopen a case shall be filed with the Clerk. The Clerk shall assign the motion to the Judge to whom the case had been assigned at the time it was closed. If that Judge is no longer sitting, the motion shall be assigned in accordance with Local Bankruptcy Rule 1073-1.

(c) *Filing Fee.*

A filing fee shall be payable at the time of making a motion to reopen a case in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge, in which event no filing fee is required. In addition, a Judge may waive this fee under appropriate circumstances or may defer payment of the fee by trustees pending discovery of additional assets.

Rule 5011-1 WITHDRAWAL OF REFERENCE

A motion for withdrawal of the reference shall be filed with the Clerk of the Court. The Clerk promptly shall transmit the motion to the District Clerk and so notify the movant. The movant shall be responsible for notifying all other parties. Following the transmittal of the motion, all further papers with respect to the motion shall be filed in the District Court.

Rule 5070-1 CALENDARS AND SCHEDULING

(a) *Obtaining Return Date.*

Prior to serving a motion or application, the moving party or applicant shall obtain a return date from the Judge's courtroom deputy or chambers.

(b) *Adjournments Sine Die.*

Any matter adjourned *sine die* and not restored to the calendar within sixty (60) days shall be deemed withdrawn without prejudice.

CROSS-REFERENCE: E.D.N.Y. LBR 2002-1, 4001-1,

Rule 5073-1 PHOTOGRAPHS, RADIO, RECORDINGS AND TELEVISION

Local Civil Rule 1.8 of the District Rules applies to all cases and proceedings pending before the Court.

Rule 5075-1 CLERK -- DELEGATED FUNCTIONS OF

(a) *Clerk's Use of Outside Services and Agents.*

The Court may direct, subject to the supervision of the Clerk, the use of agents either on or off the Court's premises, to file Court records, either by paper or electronic means, to issue notices,

to maintain case dockets, to maintain Judges' calendars, and to maintain and disseminate other administrative information where the costs of such facilities or services are paid for by the estate.

(b) The Clerk shall maintain a duplicate of all electronic records maintained by agents appointed by the Court.

(c) *Docket Entries.*

With the exception of proofs of claim, the Clerk shall consecutively number each paper (other than routine correspondence) filed in a case or adversary proceeding and enter that number on the appropriate docket sheet next to the corresponding entry. Proofs of claim shall be consecutively numbered and entered on a separate claims docket.

CROSS-REFERENCE: E.D.N.Y. LBR 3007-1

Rule 5080-1 FEES -- GENERAL

Except as otherwise authorized, the Clerk shall not render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee has been paid.

REFERENCE: Bankruptcy Rule 1006(b)

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004-1 SALE OF PROPERTY, APPRAISALS AND AUCTIONS

(a) *Conflict of Interest.*

No appraiser, auctioneer, or officer, director, stockholder, agent, employee or insider of an appraiser or auctioneer, or any relative of any of the foregoing, shall purchase, directly or indirectly, or have a financial interest in the purchase of, any property of the estate that the appraiser or auctioneer has been employed to appraise or sell.

(b) *Notice of Sale of Estate Property by Private Sale.*

The party seeking to sell property of the estate shall give the notice required by Bankruptcy Rule 2002(a)(2). Such notice at a minimum shall contain:

- (i) a general description of the property;
- (ii) a statement explaining where a complete description or inventory of the property may be obtained or examined;

- (iii) the terms of sale, including the upset price, if any, and the terms of any pending offers;
 - (iv) the place, date and time of the sale;
 - (v) the place, date and time the property may be examined prior to the sale;
 - (vi) the date by which objections to the sale must be filed with the Court;
 - (vii) the date of the hearing to consider any objections to the sale which are filed with the Court; and
 - (viii) the name and address of the Case Trustee.
- (c) *Order Confirming Sale Unnecessary.*

No order will be required to effect a properly noticed, undisputed sale of property completed by the debtor in possession or Case Trustee in accordance with the terms of this rule and Bankruptcy Rule 6004. Instead, there shall be filed with the Clerk a report setting forth:

- (i) date of completion of the sale;
 - (ii) the name or names of persons to whom the property is sold; and
 - (iii) the price received for each separate item or lot sold.
- (d) *Appraisals.*
- (i) *Filing and Access.* Any appraiser employed pursuant to § 327(a) of the Bankruptcy Code shall file with the Clerk and the United States Trustee each appraisal made of property of the estate not later than 12:00 noon on the business day prior to the scheduled sale of the property. Each appraisal shall be kept under seal upon filing and treated as confidential by the Court, the Case Trustee and the United States Trustee. Access to the appraisal may be had only by the Court, the United States Trustee, the Case Trustee and such other parties as the Court may direct, and neither they nor the appraiser shall disclose any of the contents thereof until after the consummation or abandonment of the sale of the appraised property.
 - (ii) *Filing Under Seal.* Any appraisals filed in connection with a sale shall have a cover sheet bearing the caption of the case in compliance with Local Bankruptcy Rule 9004-2 and the date, if any, of the proposed sale. It shall be marked as "Confidential -- Appraisal To Be Filed Under Seal."

- (iii) *Conformity with Auctioneer's Catalogue of Sale.* If property is to be appraised and sold at auction, upon request, the auctioneer promptly shall deliver the catalogue of sale to the appraiser. The appraisal shall conform to the catalogue to the extent possible.

(e) *Manner of Display and Conduct of Auction.*

The auction shall be conducted in the following manner:

- (i) the property shall be on public display for a reasonable period of time prior to the sale;
- (ii) prior to receiving bids, the auctioneer shall announce the terms of sale;
- (iii) where practicable, the property shall be offered for sale first in bulk and then in lots; and
- (iv) any property that is not to be included in the sale shall be set apart and conspicuously marked "not included in the sale", and such fact shall be announced by the auctioneer before the sale.

(f) *Joint Auction Sales.*

Whenever the Case Trustee and a secured party, or other third party having an interest in the property, desire to conduct a joint auction sale, the Judge shall enter an order fixing the method of allocating the commissions and expenses of sale.

(g) *Proceeds of Auction Sale.*

Upon receipt of the proceeds of sale, the auctioneer immediately shall deposit the proceeds in a separate account that the auctioneer maintains for the estate in accordance with the requirements of § 345(a) of the Bankruptcy Code. Payment of the gross proceeds of the sale shall be made promptly by the auctioneer to the Case Trustee or debtor in possession, but in no event later than ten (10) days after the date on which the proceeds are received with respect to each item or lot sold.

(h) *Report of Auction Sale.*

Within twenty (20) days after the last date of the auction, the auctioneer shall file a verified report with the Clerk and transmit a copy of the report to the Case Trustee and the United States Trustee. If all proceeds of the auction have not been received by such date, the auctioneer shall file a supplemental report within ten (10) days after all proceeds have been received. The report shall set forth:

- (i) the time, date, and place of the sale;
- (ii) the gross dollar amount of the sale;

- (iii) if property was sold in lots, a description of the items in each lot, the quantity in each lot, the dollar amount received for each lot, and any bulk bid(s) received;
- (iv) an itemized statement of expenditures, disbursements, and commissions allowable under Local Bankruptcy Rule 6005-1, including the name and address of the payee, together with the original receipts or canceled checks, or true copies thereof, for the expenditures or disbursements. Where labor charges are included, the report shall specify the days worked and the number of hours worked each day by each person and the person's social security number, together with an affidavit from all persons receiving compensation which also sets forth all amounts received. If the canceled checks are not available at the time the report is filed, the report shall so state, and the canceled checks shall be filed as soon as they become available;
- (v) where the auctioneer has a blanket insurance policy covering all sales conducted by the auctioneer, for which original receipts and canceled checks are not available, an explanation of how the insurance expense charged to the estate was computed;
- (vi) if any articles were withdrawn from the sale because of a third party claim of an interest therein, a separate itemized statement of the articles reflecting the names of such third parties;
- (vii) the names and addresses of all purchasers;
- (viii) the sign-in sheet, or, if none, the approximate number of people attending the sale;
- (ix) the items for which there were no bids and the disposition of those items;
- (x) the terms and conditions of sale that were read to the audience immediately prior to the commencement of the sale;
- (xi) a statement of the manner and extent of advertising of the sale, including a copy of the published advertisement and a certificate of publication;
- (xii) a statement of the manner and extent of the availability of the items for inspection;
- (xiii) a copy of the order retaining the auctioneer; and

- (xiv) any other information that the Case Trustee, the United States Trustee or the Judge may request.

(i) *Affidavit to Accompany Report of Auction Sale.*

The auctioneer shall submit with the report of sale an affidavit stating:

- (i) whether the auctioneer is duly licensed;
- (ii) the auctioneer's license number and place of business;
- (iii) the authority pursuant to which the auctioneer conducted the auction;
- (iv) the date and place of the auction;
- (v) that the labor and other expenses incurred on behalf of the estate as listed in the report of sale were reasonable and necessary; and
- (vi) that the gross proceeds of sale were remitted to the Case Trustee or debtor in possession and the date of the remittance.

(j) *Notice of Sale by Auction; Advertisement and Publication.*

An advertisement or publication of notice of a sale by auction or otherwise may be made without Court approval if it is sufficient to provide adequate notice of the sale and is advertised or published at least once in a newspaper of general circulation in the city or county in which the property is located. The advertisement or publication shall include: (i) the date, time, and place of the sale; (ii) a description of the property to be sold; (iii) the terms and conditions of the sale; and (iv) the name, address, and telephone number of the auctioneer. The Judge may fix the manner and extent of advertising and publication at any time.

(k) *No Order Needed to Confirm Sale.*

Unless a timely objection is made, no order of the Court shall be required to confirm a sale of property pursuant to this rule. The Case Trustee, debtor, or debtor in possession may execute any documents and instruments that are necessary to complete the sale and shall file with the Clerk and transmit to the United States Trustee a report of the sale as required by Bankruptcy Rule 6004(f) when the sale is completed. On request, the Clerk shall issue a certificate stating that a notice of a proposed auction, with proof of service, has been filed with the Clerk pursuant to Local Bankruptcy Rule 2002-1 and that no timely objection has been filed.

CROSS-REFERENCE: E.D.N.Y. LBR 2014-1, 6005-1

Rule 6005-1 AUCTIONEERS

(a) *Retention of Auctioneer.*

No debtor or Case Trustee shall retain the services of an auctioneer without prior order of the Court.

(b) *Compensation.*

Compensation and reimbursement of expenses shall be allowed to an auctioneer for sales of property in an amount not to exceed:

- (i) commissions on each sale conducted by the auctioneer at the following rates:
 - (A) 10% of any gross proceeds of sale up to \$50,000;
 - (B) 8% of any gross proceeds of sale in excess of \$50,000 but not more than \$75,000;
 - (C) 6% of any gross proceeds of sale in excess of \$75,000 but not more than \$100,000;
 - (D) 4% of any gross proceeds of sale in excess of \$100,000 but not more than \$150,000; and
 - (E) 2% of any gross proceeds of sale in excess of \$150,000; and
- (ii) reimbursement for reasonable and necessary expenses directly related to the sale, including labor, printing, advertising, and insurance, but excluding workers' compensation, social security, unemployment insurance, and other payroll taxes. When directed by the Case Trustee or debtor in possession to transport goods, the auctioneer may be reimbursed for expenditures related thereto. No travel expenses shall be allowed, except as ordered by the Court.

(c) *Bond.*

An auctioneer employed pursuant to § 327 of the Bankruptcy Code shall not act until the auctioneer files with the Clerk, together with a copy to the United States Trustee, with respect to each estate, at the auctioneer's expense, a surety bond in favor of the United States, to be approved, and in such sum as may be fixed, by the United States Trustee, conditioned upon:

- (i) the faithful and prompt accounting for all monies and property that may come into the auctioneer's possession;
- (ii) compliance with all rules, orders, and decrees of the Court; and
- (iii) the faithful performance of the auctioneer's duties.

(d) *Blanket Bond.*

In lieu of a bond in each case, an auctioneer may be permitted to file, at the auctioneer's own expense, a blanket bond covering all cases in which the auctioneer may act. The blanket bond shall be in favor of the United States in such sum as the United States Trustee shall fix and shall be conditioned for each estate on the same terms as bonds in separate estates.

(e) *Application for Commissions and Reimbursement of Expenses.*

An auctioneer shall file an application with the Clerk for approval of commissions and reimbursement of expenses and give notice in accordance with Bankruptcy Rule 2002(a). No application shall be granted unless the report of sale and accompanying affidavit referred to in Local Bankruptcy Rule 6004-1(h) and (i) have been filed. The application shall state whether the debtor or the Case Trustee has any objection to such application.

CROSS-REFERENCE: E.D.N.Y. LBR 2014-1, 6004-1, 9025-1

Rule 6007-1 ABANDONMENT OR DISPOSITION OF PROPERTY

The notice of a proposed abandonment or disposition of property pursuant to Bankruptcy Rule 6007(a) shall describe the property to be abandoned or disposed of, and state concisely the reason for the proposed abandonment or disposition.

PART VII ADVERSARY PROCEEDINGS

Rule 7005-1 FILING OF DISCOVERY-RELATED DOCUMENTS

(a) Transcripts of depositions, exhibits to depositions, interrogatories, answers to interrogatories, document requests, responses to document requests, requests for admissions, and responses to requests for admissions shall not be filed with the Clerk.

(b) When discovery or disclosure material not on file with the Court is needed for an appeal, the necessary portion of that material may be filed with the Clerk.

Rule 7007-1 MOTIONS

(a) *Opposition to Motions.*

A response to any motion in an adversary proceeding is required. It shall be in writing, state with particularity the legal and factual grounds therefor, and be served on the movant and any other parties in the adversary proceeding.

(b) *Discovery-Related Motions.*

No discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be heard unless counsel for the moving party files with the Clerk, at or prior to the hearing, an affidavit certifying that such counsel has conferred with or made a good faith effort to confer with counsel for the opposing party in a *bona fide* effort to resolve by agreement the issues raised by the motion without judicial intervention and has been unable to reach an agreement. The affidavit shall describe the efforts employed to resolve the discovery dispute without judicial intervention. If any of the issues raised by the motion are resolved prior to the hearing, the affidavit shall specify the issues so resolved and the issues remaining unresolved. The affidavit must be served so as to be received by the opposing party and the Judge prior to the hearing.

CROSS-REFERENCE: E.D.N.Y. LBR 9006-1

Rule 7016-1 SUBMISSION OF MARKED PLEADINGS

At least three (3) business days before an adversary proceeding is scheduled for trial, counsel for the plaintiff shall file with the Clerk and serve upon opposing counsel, so as to be received at least three (3) business days prior to trial, a copy of marked pleadings, which shall consist of a copy of the complaint and any third party complaint, cross claim, or counterclaim, briefly indicating in the margin thereof, at each numbered paragraph, the manner in which the defendant or respondent, or any third party defendant or respondent who has filed an answer thereto, responds to the allegations contained in each paragraph.

Rule 7024-1 NOTICE OF CLAIM OF UNCONSTITUTIONALITY

Any time a party raises a question concerning the constitutionality of an act of Congress or a state legislative body affecting the public interest, such party shall notify the Judge in writing of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and proceeding.

CROSS-REFERENCE: E.D.N.Y. LBR 9014-1

**Rule 7052-1 PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Before or after the announcement of a decision, the Judge, on notice to all parties, may require the submission of proposed findings of fact, with specific reference to the record, and conclusions of law. Any party submitting proposed findings of fact and conclusions of law shall serve them on all other parties within the time fixed by the Judge. Proposed findings of fact and conclusions of law shall not form any part of the record.

Rule 7054-1 COSTS -- TAXATION/PAYMENT

Local Civil Rule 54.1 of the District Rules applies in cases and adversary proceedings.

Rule 7055-1 DEFAULT JUDGMENT

Judgment by default pursuant to Bankruptcy Rule 7055 may be entered in an adversary proceeding only after motion, upon notice to the defendant(s) and, except in an adversary proceeding to determine dischargeability, the Case Trustee.

Rule 7056-1 SUMMARY JUDGMENT

Upon any motion for summary judgment pursuant to Bankruptcy Rule 7056, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion. The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. Each statement of material fact by a movant or opponent must be followed by citation to evidence which would be admissible, set forth as required by Federal Rule of Civil Procedure 56(e).

**PART VIII APPEALS TO DISTRICT COURT OR
BANKRUPTCY APPELLATE PANEL**

Rule 8004-1 COPIES OF NOTICE OF APPEAL

No later than one (1) day after the filing of a notice of appeal, the appellant shall provide the Clerk with sufficient copies of the notice and address labels for all parties to be served to permit the Clerk to comply with Bankruptcy Rule 8004.

Rule 8007-1**RECORD ON APPEAL**

(a) A party filing a designation of items to be included in a record on appeal pursuant to Bankruptcy Rule 8006 shall provide the Clerk with a photocopy of each item designated. The photocopy shall conform to the original on file with the Clerk. The Clerk shall retain the original of each item designated, and transmit to the District Clerk, as the record on appeal, the copies of such items. Upon the docketing of the notice of appeal in the District Court, all papers relating to the appeal shall be filed with the District Clerk, including any request for a stay pending appeal.

(b) *Exhibits Designated as Part of Record on Appeal.*

Not later than three (3) business days after the filing of the designation or counter-designation of the contents for inclusion in the record on appeal, the attorney having possession of the original of any designated exhibit shall deposit it, or a true copy thereof, with the Clerk. Exhibits not so designated shall remain in the custody of the attorney, who shall have the responsibility of promptly forwarding them to the clerk of the appellate court upon that clerk's request.

Rule 8016-1**ORDER, JUDGMENT OR REMAND BY APPELLATE COURT**

An order or judgment of an appellate court, when filed in the office of the Clerk, shall automatically become the order or judgment of the Court and be entered as such by the Clerk without further order. If the order or judgment of the appellate court remands for further proceedings, a motion for such further proceedings shall be made by the appropriate party within twenty (20) days of the remand and referred to the Judge who heard the proceeding below unless the appellate court orders otherwise.

PART IX**GENERAL PROVISIONS****Rule 9001-1****DEFINITIONS**

(a) *Definitions.*

Unless inconsistent with the context, in these Local Bankruptcy Rules --

- (i) *"Bankruptcy Act"* means the Bankruptcy Act of 1898, as amended (repealed 1978);
- (ii) *"Bankruptcy Code" or "Code"* means title 11 of the United States Code, as amended from time to time;
- (iii) *"Bankruptcy Rules"* means the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms promulgated pursuant to 28 U.S.C. § 2075, as amended from time to time;

- (iv) *"Case Trustee"* means the person charged with the administration of the case;
- (v) *"Chief Judge"* means the Chief Judge of the Court;
- (vi) *"Clerk"* means the clerk or a deputy clerk of the Court;
- (vii) *"Court"* means the United States Bankruptcy Court for the Eastern District of New York;
- (viii) *"District Clerk"* means the clerk or a deputy clerk of the District Court;
- (ix) *"District Court"* means the United States District Court for the Eastern District of New York;
- (x) *"District Judge"* means a United States District Judge or a Judge appointed to, or sitting by designation in, the District Court;
- (xi) *"District Rules"* means the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York;
- (xii) *"Former Local Bankruptcy Rules"* means the United States Bankruptcy Court Eastern District of New York Local Bankruptcy Rules, effective January 1, 1981, as revised;
- (xiii) *"Judge"* means a bankruptcy judge appointed to or sitting by designation in the Court (or, with respect to a proceeding that has not been referred or which has been withdrawn, the District Judge); and
- (xiv) *"United States Trustee"* means the United States Trustee for the Second Circuit or its authorized representative for the Eastern District of New York.

(b) *Construction.*

Unless inconsistent with the context, other words and phrases used in these Local Bankruptcy Rules shall be construed in accordance with the definitions set forth in the Bankruptcy Code and Bankruptcy Rules.

(c) *Use of Terms "Documents" and "Papers."*

The terms "documents" and "papers" as used in these Local Bankruptcy Rules include those filed or transmitted by electronic means to the extent authorized.

Rule 9004-1**PAPERS -- REQUIREMENTS OF FORM****(a) *Form of Papers.***

- (i) Papers submitted for filing shall: (A) be plainly typed, printed or copied; (B) have no erasures or interlineations which materially deface them; and (C) be signed in accordance with Bankruptcy Rule 9011.
- (ii) Every petition, schedule or other paper which is submitted to the Clerk (excluding proofs of claim and Case Trustees' Reports of No Distribution) shall be affixed in a legal back.
- (iii) All papers submitted must be on 8 ½" x 11" paper, have two holes punched at the top of the document and shall not be stapled or otherwise bound on the side. These holes shall be centered and set three inches apart.

(b) *Amendments.*

Any amendment filed as a matter of right or allowed by order shall be complete, including exhibits, and shall not incorporate by reference any prior paper.

(c) *Copy for United States Trustee.*

A copy of any paper filed with the Clerk, other than a proof of claim, may be submitted at the Clerk's office for transmittal to the United States Trustee. This does not constitute service where service is required.

(d) *Chambers Copy.*

A copy of each paper filed with the Clerk, other than petitions, schedules and proofs of claim, shall be marked "Chambers Copy" and delivered to the Clerk on the same date as the papers are filed with the Clerk.

CROSS-REFERENCE: E.D.N.Y. LBR 1009-1, 4003-1, 4004-1, 4007-1

Rule 9004-2**CAPTION -- PAPERS, GENERAL**

- (a) All papers submitted for filing shall have a caption reading "United States Bankruptcy Court, Eastern District of New York", and shall include the title and chapter of the case. Subsequent to the filing of the petition for relief, all papers shall also include the docket number and the Judge code. All papers in an adversary proceeding shall also contain the full title of the lawsuit and the adversary

proceeding docket number. Except for involuntary petitions, all petitions for relief shall also set forth the social security or tax identification number of the debtor.

(b) In consolidated cases, the docket number for the lead case shall be listed first and shall be followed by the docket numbers of all cases contained in the consolidation in ascending order.

(c) The return date and time of a motion shall be included in the upper right hand corner of the caption of the motion and all related documents. In addition, the submitting party shall set forth a brief description of the relief sought. All further papers shall set forth in the upper right hand corner the last date on which the matter appeared on the calendar and the next scheduled return, hearing or trial date.

Rule 9006-1 TIME FOR SERVICE AND FILING OF MOTIONS AND ANSWERING PAPERS

(a) *Motions.*

All motion papers shall be served at least ten (10) days before the return date. Any answering papers shall be served so as to ensure actual receipt not later than three (3) days before the return date.

(b) *Time for Filing with Clerk.*

All motions and answering papers shall be filed with the Clerk within three (3) business days after service but in no event later than five (5) business days prior to the hearing. Reply papers, if any, shall be filed by the movant at least one business day prior to the return date.

(c) *Extra Time if Service is by Mail.*

If papers are served by mail, an additional three (3) days must be added to the minimum service requirement; provided, however, that if the Court authorizes the papers to be served electronically or if the papers are served by overnight courier or mail, only one additional day must be added to the minimum service requirement.

CROSS-REFERENCE: E.D.N.Y. LBR 1002-1, 5005-1, 7007-1
REFERENCE: Bankruptcy Rules 2002, 9006

Rule 9011-1 ATTORNEYS -- DUTIES

(a) All papers that are submitted for filing shall be signed by an attorney of record in the attorney's own name or, if there is no attorney, by the party. The name of the attorney or party *pro se* shall be clearly printed or typed below the signature, together with the attorney's or party's address and telephone number. If signed by an attorney, the initials of the attorney's first and last name

followed by the last four digits of the attorney's social security number shall appear immediately after the attorney's name.

(b) The initials of the attorney's first and last name followed by the last four digits of the social security number of the attorney making an electronic filing shall constitute the signature of the attorney for purposes of Bankruptcy Rule 9011. An original signed copy of the filing shall be maintained in the attorney's files.

(c) Any password required for electronic filing shall be used only by the attorney to whom the password is assigned and authorized members and employees of such attorney's firm.

(d) The provision of this rule relating to electronic filing shall become effective only when electronic filing is otherwise authorized.

Rule 9013-1 MOTION PRACTICE

(a) *Rule or Statutory Basis.*

Each motion shall specify the rules and statutory provisions upon which it is predicated and the specific legal and factual grounds pursuant to which the relief is sought. If such specification has not been made, the Judge may strike the motion from the calendar.

(b) *Memorandum of Law.*

Each motion and response thereto shall be accompanied by an appropriate memorandum of law setting forth the points and authorities relied upon. Failure to comply with this subdivision may be deemed sufficient cause for the denial of the motion or the granting of the motion by default.

(c) *Entities to Receive Notice.*

In addition to the requirements of Bankruptcy Rule 2002 and Local Bankruptcy Rule 2002-2, notice of a motion shall be given to any entity having or claiming an interest in the subject matter of the proposed action or order or who otherwise would be affected by the proposed action or order.

(d) *Hearing Required.*

Oral argument is required at a hearing on all calendar matters unless the Judge directs the parties to submit.

(e) *Motions for Reconsideration.*

A motion for reconsideration shall be served and filed within ten (10) days after the entry of the Judge's order.

(f) *Motions to Avoid Liens.*

Motions seeking relief pursuant to 11 U.S.C. § 522(f) must include one or more affidavits setting forth: (i) the date of filing of the bankruptcy petition, (ii) a description of the judgments to be avoided (*e.g.*, name of judgment holder, date and place of docketing of the judgment, amount of judgment), (iii) the amount of each lien on the property (including all mortgages), and (iv) the amount of the exemption claimed by the debtor(s). In addition, there must be evidentiary support (other than tax assessments) showing the fair market value of the property as of the date of the filing of the bankruptcy petition; a statement by a debtor or counsel is not sufficient. Copies of relevant documents must also be annexed as exhibits, including, *e.g.*, the lien search from the County Clerk's Office, and pay-off statements from the mortgage holders.

REFERENCE: Bankruptcy Rule 9023

Rule 9014-1 CONTESTED MATTERS

Federal Rule of Civil Procedure 7(b) as incorporated in Bankruptcy Rule 7007, Bankruptcy Rule 7024, and Local Bankruptcy Rules 7005-1, 7007-1, 7016-1, 7024-1, 7052-1, 7054-1 and 7056-1, shall apply in contested matters. Any reference to adversary proceedings in such rules shall be deemed for this purpose a reference to contested matters.

Rule 9021-1 ENTRY OF ORDERS, JUDGMENTS AND DECREES

(a) *Entry.*

The Clerk shall enter all orders, decrees, and judgments of the Court in the electronic filing system, which shall constitute docketing of the order, decree, or judgment for all purposes. The Clerk's notation in the appropriate docket of an order, judgment, or decree shall constitute the entry of the order, judgment, or decree.

(b) *Official Location.*

The index of the Record of Judgments maintained by the Clerk for judgments entered up to and including January 31, 1999 is officially located in the Office of the District Clerk. The index of the Record of Judgments maintained by the Clerk for judgments entered on or after February 1, 1999 is officially located in the Brooklyn Office of the Clerk. Each court will, however, maintain a separate index of all judgments signed by the respective Judges at that site.

Rule 9023-1 NEW TRIALS; COSTS

The expense of any party in obtaining all or any part of a transcript for purposes of a new trial or amended findings may be a cost taxable against the losing party.

Rule 9025-1 SURETIES

(a) *Execution by Surety Only.*

If a bond, undertaking, or stipulation is required, an instrument executed only by the surety shall be sufficient.

(b) *Security for Bond.*

Except as otherwise provided by law, every bond, undertaking, or stipulation referring to a bond shall be secured by: (i) the deposit of cash or government bonds in the amount of the bond, undertaking, or stipulation; (ii) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury; or (iii) the undertaking or guaranty of two individual residents of the Eastern District or Southern District of New York, each of whom owns real or personal property within such district with an unencumbered value of twice the amount of the bond in excess of the surety's debts, liabilities, legal exemptions, and obligations on other bonds, guaranties, undertakings, or stipulations.

(c) *Affidavit by Individual Surety.*

In the case of a bond, undertaking, or stipulation executed by individual sureties, each surety shall attach an affidavit of justification, giving the surety's full name, occupation, and residence and business addresses, and showing that the surety is not disqualified from acting as an individual surety under subdivision (d) of this rule.

(d) *Persons Who May Not Act as Sureties.*

Members of the bar, administrative officers and employees of the Court, the marshal, and the marshal's deputies and assistants may not act as sureties in any pending case, adversary proceeding, or contested matter.

(e) *Approval of Bonds of Corporate Sureties.*

Except as otherwise provided by §§ 303 and 322(b) of the Bankruptcy Code and Bankruptcy Rule 2010, all bonds, undertakings, and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where the amount of such bonds or undertakings has been fixed by a Judge, an order of the Court or a statute, may be approved by the Clerk.

CROSS-REFERENCE: E.D.N.Y. LBR 6005-1

Rule 9028-1 UNAVAILABILITY OF A JUDGE

In the event of the unavailability of a Judge, any other Judge may act. To obtain the assistance of an available Judge, the parties shall communicate first with the chambers staff of the assigned Judge or, if chambers staff is unavailable, then with the Clerk.

Rule 9070-1 CUSTODY OF EXHIBITS

(a) *Retention by Attorney.*

In any trial or contested hearing in which exhibits are introduced, exhibits shall not be filed with the Clerk unless the Judge orders such filing, but shall be retained in the custody of the attorney who produced them in Court, who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the appellate court.

(b) *Removal of Exhibits from Court.*

Exhibits that have been filed with the Clerk shall be removed by the party responsible for the exhibits: (i) if no appeal has been taken, at the expiration of the time for taking an appeal; or (ii) if an appeal has been taken, within thirty (30) days after the record on appeal has been returned to the Clerk. Parties failing to comply with this rule shall be notified by the Clerk to remove their exhibits, and, upon their failure to do so within thirty (30) days of such notification, the Clerk may dispose of the exhibits at the expense of the party responsible.

CROSS-REFERENCE: E.D.N.Y. LBR 8007-1

Rule 9072-1 SETTLEMENT OF ORDER, JUDGMENT OR DECREE

If, following a trial, hearing or decision in an adversary proceeding or contested matter, the Judge directs a party to settle an order, judgment or decree, the party shall, within fifteen (15) days of the Judge's direction, file its proposed order, judgment, or decree with the Clerk upon not less than five (5) days' notice to all parties to the adversary proceeding or contested matter, except that such notice period shall not apply if all parties to the adversary proceeding or contested matter have consented in writing to the proposed order, judgment, or decree. Two (2) days' notice is required of all counter-proposals. No proposed or counter-proposed order, judgment, or decree settled pursuant to this rule shall form a part of the record of the case, adversary proceeding, or contested matter. If the order is not timely submitted or settled, the matter shall be deemed abandoned. Three (3) days must be added to the notice requirement if service is made by mail. The proposed order, judgment or decree shall refer to the hearing date to which the order applies.

Rule 9077-1 ORDERS TO SHOW CAUSE; *EX PARTE* ORDERS

(a) *Orders to Show Cause.*

No order to show cause shall be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why proceeding other than by notice of motion is necessary. The affidavit also shall state whether a previous application for similar relief has been made.

(b) *Ex Parte Orders.*

No *ex parte* order in an adversary proceeding or contested matter shall be granted unless based upon an affirmation by an attorney or an affidavit showing cause for *ex parte* relief, and stating whether a previous application for similar relief has been made.

Rule 9078-1 PROOF OF SERVICE

Any party serving a pleading or other document shall file proof of service not later than the earlier of three days following the date of service or the time of the hearing.

CROSS-REFERENCE: E.D.N.Y. LBR 1002-1, 5005-1, 7007-1

APPENDIX

LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK (EFFECTIVE APRIL 15, 1997) REFERRED TO IN THESE RULES

Local Civil Rule 1.3. Admission to the Bar [See E.D.N.Y. LBR 2090-1(a)]

(a) A member in good standing of the bar of the state of New York, or a member in good standing of the bar of the United States District Court in New Jersey, Connecticut or Vermont and of the bar of the State in which such district court is located, provided such district court by its rule extends a corresponding privilege to members of the bar of this court, may be admitted to practice in this court on compliance with the following provisions:

Each applicant for admission shall file with the clerk, at least ten (10) days prior to hearing (unless, for good cause shown, the judge shall shorten the time), a verified written petition for admission on a form supplied by the clerk stating: (1) applicant's residence and office address; (2) the time when, and courts where, admitted; (3) applicant's legal training and experience; (4) whether applicant has ever been held in contempt of court, and, if so, the nature of the contempt and the final disposition thereof; (5) whether applicant has ever been censured, suspended or disbarred by any court, and, if so, the facts and circumstances connected therewith; (6) that applicant has read and is familiar with (a) the provisions of the Judicial Code (Title 28, U.S.C.) which pertain to the jurisdiction of, and practice in, the United States District Courts; (b) the Federal Rules of Civil Procedure; (c) the Federal Rules of Criminal Procedure; (d) the Federal Rules of Evidence; (e) the Local Rules of the United States District Court for the Southern and Eastern Districts of New York; and (f) the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York; and (7) that applicant will faithfully adhere to all rules applicable to applicant's conduct in connection with any activities in this court.

The petition shall be accompanied by a certificate of the clerk of the court for each of the states in which the applicant is a member of the bar, which has been issued within thirty (30) days and states that the applicant is a member in good standing of the bar of that state court. The petition shall also be accompanied by an affidavit of an attorney of this court who has known the applicant for at least one year, stating when the affiant was admitted to practice in this court, how long and under what circumstances the attorney has known the applicant, and what the attorney knows of the applicant's character and experience at the bar. Such petition shall be placed at the head of the calendar and, on the call thereof, the attorney whose affidavit accompanied the petition shall personally move the admission of the applicant. If the petition is granted, the applicant shall take the oath of office and sign the roll of attorneys.

(b) A member in good standing of the bar of either the Southern or Eastern District of New York may be admitted to the bar of the other district without formal application (1) upon filing in that district a certificate of the Clerk of the United States District Court for the district in which the applicant is a member of the bar, which has been issued within thirty (30) days and states that the applicant is a member in good standing of the bar of that court and (2) upon taking the oath of office, signing the roll of attorneys of that district, and paying the fee required in that district.

(c) A member in good standing of the bar of any state or of any United States District Court may be permitted to argue or try a particular case in whole or in part as counsel or advocate, upon motion and upon filing with the Clerk of the District Court a certificate of the court for each of the states in which the applicant is a member of the bar, which has been issued within thirty (30) days and states that the applicant is a member in good standing of the bar of that state court. Only an attorney who has been so admitted or who is a member of the bar of this court may enter appearances for parties, sign stipulations or receive payments upon judgments, decrees or orders.

(d) If an attorney who is a member of the bar of this court, or who has been authorized to appear in a case in this court, changes his or her residence or office address, the attorney shall immediately notify the clerk of the court, in addition to serving and filing a notice of change of address in each pending case in which the attorney has appeared.

[Source: Former Local General Rule 2.]

Local Civil Rule 1.8. Photographs, Radio, Recordings, Television
[See E.D.N.Y. LBR 5073-1]

No one other than court officials engaged in the conduct of court business shall bring any camera, transmitter, receiver, portable telephone or recording device into any courthouse or its environs without written permission of a judge of that court.

Environs as used in this rule shall include the entire United States Courthouse property, including all entrances to and exits from the buildings.

[Source: Former Local General Rule 7.]

Local Civil Rule 54.1. Taxable Costs [See E.D.N.Y. LBR 7054-1]

(a) **Request to Tax Costs.** Within thirty (30) days after the entry of final judgment, or, in the case of an appeal by any party, within thirty (30) days after the final disposition of the

appeal, unless this period is extended by the court for good cause shown, any party seeking to recover costs shall file with the clerk a request to tax costs annexing a bill of costs and indicating the date and time of taxation. Costs will not be taxed during the pendency of any appeal. Any party failing to file a request to tax costs within this thirty (30) day period will be deemed to have waived costs. The request to tax costs shall be served upon each other party not less than three (3) days (if service is made by hand delivery) or six (6) days (if service is made by any means other than hand delivery) before the date and time fixed for taxation. The bill of costs shall include an affidavit that the costs claimed are allowable by law, are correctly stated and were necessarily incurred. Bills for the costs claimed shall be attached as exhibits.

(b) **Objections to Bill of Costs.** A party objecting to any cost item shall serve objections in writing prior to or at the time for taxation. The clerk will proceed to tax costs at the time noticed and allow such items as are properly taxable. In the absence of written objection, any item listed may be taxed within the discretion of the clerk.

(c) **Items Taxable as Costs**

(1) **Transcripts.** The cost of any part of the original trial transcript that was necessarily obtained for use in this court or on appeal is taxable. The cost of a transcript of court proceedings prior to or subsequent to trial is taxable only when authorized in advance or ordered by the court.

(2) **Depositions.** Unless otherwise ordered by the court, the original transcript of a deposition, plus one copy, is taxable if the deposition was used or received in evidence at the trial, whether or not it was read in its entirety. Costs for depositions are also taxable if they were used by the court in ruling on a motion for summary judgment or other dispositive substantive motion. Costs for depositions taken solely for discovery are not taxable. Counsel's fees and expenses in attending the taking of a deposition are not taxable except as provided by statute, rule (including Local Civil Rule 30.1), or order of the court. Fees, mileage, and subsistence for the witness at the deposition are taxable at the same rates as for attendance at trial if the deposition taken was used or received in evidence at the trial.

(3) **Witness Fees, Mileage and Subsistence.** Witness fees and mileage pursuant to 28 U.S.C. § 1821 are taxable if the witness testifies. Subsistence pursuant to 28 U.S.C. § 1821 is taxable if the witness testifies and it is not practical for the witness to return to his or her residence from day to day. No party to the action may receive witness fees, mileage, or subsistence. Fees for expert witnesses are taxable only to the extent of fees for ordinary witnesses unless prior court approval was obtained.

(4) **Interpreting Costs.** The reasonable fee of a competent interpreter, and the reasonable cost of special interpretation services pursuant to 28 U.S.C. § 1828, are taxable if the fee of the witness involved is taxable. The reasonable fee of a translator is also taxable if the document translated is used or received in evidence.

(5) **Exemplifications and Copies of Papers.** A copy of an exhibit is taxable if the original was not available and the copy was used or received in evidence. The cost of copies used for the convenience of counsel or the court is not taxable. The fees for a search and certification or proof of the non-existence of a document in a public office are taxable.

(6) **Maps, Charts, Models, Photographs and Summaries.** The cost of photographs, 8" x 10" in size or less, is taxable if used or received in evidence. Enlargements greater than 8" x 10" are not taxable except by order of court. Costs of maps, charts, and models, including computer generated models, are not taxable except by order of court. The cost of compiling summaries, statistical comparisons and reports is not taxable.

(7) **Attorney Fees and Related Costs.** Attorney fees and disbursements and other related fees and paralegal expenses are not taxable except by order of the court.

(8) **Fees of Masters, Receivers, Commissioners and Court Appointed Experts.** Fees of masters, receivers, commissioners, and court appointed experts are taxable as costs, unless otherwise ordered by the court.

(9) **Costs for Title Searches.** A party is entitled to tax necessary disbursements for the expenses of searches made by title insurance, abstract or searching companies, or by any public officer authorized to make official searches and certify to the same, taxable at rates not exceeding the cost of similar official searches.

(10) **Docket and Miscellaneous Fees.** Docket fees, and the reasonable and actual fees of the clerk and of a marshal, sheriff, and process server, are taxable unless otherwise ordered by the court.

[Source: Former Local Civil Rules 11, 12]